IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 750 OF 2007
WITH
CIVIL APPLICATION NO.959 OF 2007

Smt. Parvati Shankar Nitore & Ors. ... Appellants.

V/s.

Mr. Shankar Gangaram Surve & Ors. ... Respondents.

Mr. K.S. Dewal for the appellants.
Mr. P.S. Dani for respondent 1.

CORAM : D.B. BHOSALE, J.

30TH OCTOBER 2007.

P.C. :-

. This Second Appeal is directed against concurrent judgments of the Courts below by which a suit filed by the respondent - plaintiff on the basis of a sale deed dated 24.11.1970 has been decreed. Mr. Dewal, learned counsel for the appellants at the outset submits that one Govind Hari, the father of the mothers of the plaintiff and the defendants was the permanent tenant in the suit property. He further submits that it is not clear from the facts of the case whether Govind

Hari died in 1948 or thereafter. After the death of Govind Hari, the appellants have inherited tenancy rights in the suit property and, therefore, in any case, there cannot be a decree of possession against the defendants. The suit property is a small plot of land admeasuring 3 & 1/2 ares situated within the municipal limits of Ratnagiri town. It appears that in respect of the very same property, the defendants had filed Regular Civil Suit No.17 of 1991 against the mother of the plaintiff claiming to be in possession thereof contending to be a tenant in the house constructed on the said plot. The defendants initially had claimed ownership of the suit property contending that when the suit property was purchased by the sale deed dated 27.9.1970, her mother funded for the purchase and thereby she also is the owner of the suit property. Both the courts, however, have rejected his contention. In my opinion, the findings recorded in respect thereof are entirely based on the evidence on record. It is pertinent to note that in the present suit the appellant/defendant had filed counterclaim claiming independent right in the suit property. The counterclaim however, was rejected and in the first appeal, the appellants had filed a pursis giving up

their right in the suit property. It is thus clear that the stand of the defendants is not consistent in respect of the suit property. It is against this backlog and in view of the fact that admittedly the property in dispute was let out for residential purpose, in my view, all the contentions urged by Mr. Dewal, learned counsel for the appellant, based on the provisions of the Bombay Tenancy and Agricultural Lands Act, have absolutely no merit. The concurrent findings recorded by the courts below are entirely based on the evidence on record and I find sufficient material on record to sustain those findings. No substantial question of law is raised. Hence, Second Appeal is dismissed. Consequently, Civil Application is disposed of.

2. The respondent/decree holder shall not execute the decree for a period of eight weeks from today.

(D.B.BHOSALE,J.)